

THERMAL SERVICES AGREEMENT

BY AND BETWEEN

STATE OF LOUISIANA

AND

BATON ROUGE ENERGY PARTNERS, LLC

[•], 2019

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- Exhibit “A” – Thermal Services Points of Demarcation
- Exhibit “B” – Performance Standards
- Exhibit “C” – Thermal Services Requirements and Capacity
- Exhibit “D” – Thermal Services Rate Design
- Exhibit “E” – Sample Calculation of Thermal Services Charges
- Exhibit “F” – Material Change Obligations
- Exhibit “G” – Termination

THERMAL SERVICES AGREEMENT

THIS THERMAL SERVICES AGREEMENT (this “**Agreement**”) is entered into effective as of [●], 2019 by and between:

THE STATE OF LOUISIANA (the “**State**”), appearing herein through Jay Dardenne, the Commissioner of Administration, Division of Administration, duly authorized and empowered by the State; and

BATON ROUGE ENERGY PARTNERS, LLC (“**BREP**”), a Delaware limited liability company, appearing herein through Michael T. Durham, its duly authorized agent;

(the State and BREP are collectively referred to as the “**Parties**” and singularly referred to as a “**Party**”).

RECITALS:

WHEREAS, the State is a party to the Shaw Center CEA whereby the State provides thermal services to the Shaw Center Building (for purposes of this Agreement, the Shaw Center Building shall be deemed a Covered Facility);

WHEREAS, the State provides Thermal Services to the Shaw Center Building through the Shaw Center Plant;

WHEREAS, the State and LA Energy Partners, LLC, a Delaware limited liability company and sole member of BREP (“**LEP**”), have entered into a Cooperative Endeavor Agreement dated [●], 2019 (the “**CEA**”), which establishes a framework pursuant to which State and LEP may collaborate on the lease or concession of State-owned or -controlled facilities for the provision of work and services by LEP, directly or indirectly through Project SPEs;

WHEREAS, pursuant to the Shaw Center Plant Lease between the State and BREP, the State has exclusively leased to BREP the Shaw Center Plant and all of the Shaw Center Plant Assets (as defined in the Shaw Center Plant Lease);

WHEREAS, as the exclusive leaseholder of the Shaw Center Plant and the Shaw Center Plant Assets, BREP hereby agrees to utilize during the Term of this Agreement those assets, properties and equipment to provide Thermal Services to the Shaw Center Building and relieve the State of that obligation and burden; and

WHEREAS, the State is authorized to enter into this Agreement pursuant to La. R.S. 33:9036 for the purposes of economic development, as the Shaw Center Building and the Shaw Center Plant are located within a downtown development district in the city of Baton Rouge.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth below, the State and BREP, each intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINED TERMS

Section 1.1 Defined Terms. Capitalized terms used but not otherwise defined in this Agreement have the meanings ascribed to them in **Exhibit “A”** of the CEA. Defined terms will be given

their common and ordinary meanings when they appear uncapitalized in the text. Undefined terms will be given their common and ordinary meanings pursuant to custom and industry parlance. Notwithstanding the foregoing, any terms defined in this Agreement that conflict with the definition provided in **Exhibit “A”** of the CEA shall have the meanings provided herein. BREP is the Project SPE for the Phase I Project as such term and concept are used and referenced in the CEA. BREP’s Financier for the Phase I Project is identified in Section 14.1. This Agreement constitutes a Phase I Ancillary Agreement.

Section 1.2 Adoption and Conflicts. The terms and conditions of the CEA are adopted as if otherwise set forth herein. To the extent any part of this Agreement and the CEA conflict this Agreement shall govern.

Section 1.3 Exhibits. The Exhibits attached hereto are hereby included and made part of this Agreement.

ARTICLE 2 THERMAL SERVICES

Section 2.1 Performance of Thermal Services. Throughout the Term of this Agreement, BREP will exclusively provide all of the Thermal Services for the Shaw Center Building to satisfy the Thermal Services Requirements. In the event this Agreement is terminated and the State fails to pay the entire Termination Fee pursuant to Section 10.4, if BREP elects to maintain the Shaw Center Plant Lease as provided therein, the State acknowledges that BREP shall have no further obligation or responsibility to provide Thermal Services for the Shaw Center Building from and after such termination.

Section 2.2 Provision of Thermal Services to Third Party Off-Takers. Throughout the Term of this Agreement, to the extent BREP is providing the Shaw Center Building with Thermal Services in accordance with the Thermal Services Requirements and the Performance Standards, BREP will have the right to utilize the Shaw Center Plant Assets to provide Thermal Services to Third Party Off-takers, in all instances subject to and in accordance with the requirements set forth in ARTICLE 9 of the Shaw Center Plant Lease.

ARTICLE 3 PERFORMANCE STANDARDS

Section 3.1 Performance Standards.

3.1.1 BREP will cause the Thermal Services to meet the Thermal Services Requirements and satisfy the applicable Performance Standards. Whenever the Thermal Services provided to the Shaw Center Building do not satisfy the applicable Performance Standards, BREP will take affirmative steps on an expedited basis to remedy that circumstance so that the applicable Performance Standard is satisfied. Failure to meet a Performance Standard with respect to Thermal Services will not in and of itself constitute a Loss of Availability.

3.1.2 So long as BREP complies with its obligations under this Agreement and the Shaw Center Plant Lease, BREP will have no responsibility within the Shaw Center Building for temperature comfort levels. The State will promptly notify BREP, but in any event within three (3) days after obtaining Knowledge, of any unusual, non-standard operating conditions relating to the use of any Thermal Services within the Shaw Center Building, including any leakage or escape of Thermal Energy within the Interior Distribution System of the Shaw Center.

Section 3.2 Applicable Standards.

3.2.1 Notwithstanding anything in this Agreement and the Shaw Center Plant Lease to the contrary, the State will not, and will cause Shaw Center not to, without the prior consent of BREP (or other than in the event of an Emergency), take any of the following actions with respect to chilled water and heating water:

3.2.1.1 override chilled water or heating water control valve positions;

3.2.1.2 adjust a chilled water coil leaving air temperature setpoint to a level below the rated leaving air temperature of the coil;

3.2.1.3 adjust a heating water coil leaving air temperature setpoint to a level above the rated leaving air temperature of the coil;

3.2.1.4 install chilled water coils selected for less than 42 deg. F chilled water supply temperature;

3.2.1.5 install heating water coils selected for more than 140 deg. F heating water supply temperature;

3.2.1.6 install chilled water or heating water coils selected for more than 7 psig water pressure drop;

3.2.1.7 install chilled water coils selected for less than a 12 deg. F chilled water temperature difference;

3.2.1.8 install heating water coils selected for less than a 30 deg. F heating water temperature difference;

3.2.1.9 install 3-way chilled water or heating water control valves;

3.2.1.10 install 2-position (open or closed) chilled water or heating water control valves;

3.2.1.11 fail to promptly repair or replace faulty chilled water or heating water coils;

3.2.1.12 allow chilled water or heating water to drain from the Thermal Services Distribution System;

3.2.1.13 use chilled water or heating water for purposes other than cooling, heating or dehumidification; or

3.2.1.14 interfere with, obstruct or introduce any Hazardous Materials or other foreign substance into the Shaw Center Thermal Services Distribution System (as defined in the Shaw Center Plant Lease).

ARTICLE 4
DELIVERY AND RETURN OF THERMAL SERVICES AND THERMAL ENERGY; TITLE AND RISK OF LOSS

Section 4.1 Delivery and Return of Thermal Services and Thermal Energy. Thermal Services will be made available by BREP to the Shaw Center Building at the Points of Demarcation shown on **Exhibit “A”**. The Thermal Energy that was used to deliver Thermal Services will be returned from the Shaw Center Building to the Shaw Center Plant at the Points of Demarcation.

Section 4.2 Possession and Risk of Loss. Title to any Utilities used to produce Thermal Services from the Shaw Center Plant (including for any Third Party Off-takers) will remain with the State at all times after such Utilities are delivered to the State by the applicable utility providers, but risk of loss with respect to the Thermal Services and the chilled water and heating water used to deliver the Thermal Services will be allocated between BREP and the State at the Points of Demarcation shown on **Exhibit “A”** attached hereto, with risk of loss residing with BREP for so long as the Thermal Energy is within the Shaw Center Thermal Services Distribution Systems up to Points of Demarcation, and risk of loss residing with the State for so long as the Thermal Energy reaches those Points of Demarcation and is travels through the Shaw Center Thermal Services Distribution System until again reaching Points of Demarcation. Risk of loss with respect to the Thermal Services and the chilled water and heating water used to deliver the Thermal Services will be allocated entirely to BREP with respect to Third Party Off-takers.

ARTICLE 5
THERMAL SERVICES REQUIREMENTS

Section 5.1 Thermal Services Requirements. The Thermal Services requirements and the Thermal Services capacity for the Shaw Center Building are as set forth in **Exhibit “C”** attached hereto (“**Thermal Services Requirements**” and “**Thermal Services Capacity**”, respectively). These amounts represent the Parties’ best estimate as to the amount of Thermal Services anticipated to be required by the State during the Term of this Agreement based on the Shaw Center Building as it currently exists and any proposed modifications thereto as of the Effective Date. BREP may fulfill its obligation to provide Thermal Services to the Shaw Center Building from the Shaw Center Plant or any other capacity which BREP may acquire elsewhere in order to serve third parties from time to time as appropriate; provided, that the foregoing will in no way limit or excuse BREP’s obligation to provide Thermal Services to the Shaw Center Building as required herein.

Section 5.2 Material Changes.

5.2.1 Material Change. A “**Material Change**” is:

5.2.1.1 any change in the physical or structural conditions of the Shaw Center Building that causes Thermal Services Requirements to exceed the then existing Thermal Services Capacity;

5.2.1.2 any change in the physical or structural conditions of the Shaw Center Building that requires addition to or modification of a Thermal Services Distribution System;

5.2.1.3 any change in the function or type of services delivered at the Shaw Center Building that causes the Thermal Services Requirements to exceed the then existing Thermal Services Capacity, with Thermal Services Capacity allocated and determined as provided in Section 5.2.1.1; and

5.2.1.4 any Change in Law/Standard that:

5.2.1.4.1 increases the Thermal Services Requirements beyond the then existing Thermal Services Capacity (such as, by way of example, a future Change in Law/Standard that lowers relative humidity requirements for the Shaw Center Building), or

5.2.1.4.2 requires Thermal Services Capacity in excess of the then existing Thermal Services Capacity (such as, by way of example, a future Change in Law/Standard that requires additional redundancy), or

5.2.1.4.3 diminishes the then existing Thermal Services Capacity (such as, by way of example, a future Change in Law/Standard that affects the refrigerants that may be used in the thermal energy equipment within the Shaw Center Plant); or

5.2.1.5 any other change caused by the use of the Shaw Center Building that diminishes Thermal Services Capacity or materially increases the Thermal Services Requirements (but specifically excluding any reduction in Thermal Services Capacity due to a breach by BREP of any of its obligations under this Agreement or the Shaw Center Plant Lease or the negligence of BREP or a BREP Person).

5.2.2 Material Change Notice. Within thirty (30) days of a Party becoming aware of any facts or circumstances (proposed or actual) that are reasonably likely to constitute a Material Change, such Party will notify the other Party thereof and the basis and supporting details relating thereto. Notwithstanding the foregoing, the State will give BREP reasonable advance notice (but in any event at least sixty (60) days for any changes to the Shaw Center Building) of any action it or Shaw Center intends to take that may reasonably be expected to result in a Material Change. Within thirty (30) days of BREP's receipt of a notice of Material Change (if provided by the State), or simultaneous with such notice of a Material Change (if provided by BREP), BREP will provide the State with a Material Change Notice setting forth: (i) a description of the Material Change and the circumstances giving rise to the Material Change; (ii) any Additional Works resulting therefrom; (iii) the costs anticipated to be incurred for such Additional Works; (iv) the information required by **Exhibit "F"** attached hereto; and (v) whether the Material Change would result in a Material Change Adjustment and/or a Baseline Adjustment pursuant to Section 5.3 and, if so, the basis on which the Material Change Adjustment and/or the Baseline Adjustment is to be made.

5.2.3 Additional Works. Within fifteen (15) days of delivery of a Material Change Notice, the State Representatives and the BREP Services Period Representatives will meet to review the information set forth in the Material Change Notice. In the event that the Material Change requires Additional Works, the costs of such work shall be the responsibility of the State. Any Additional Works performed by BREP will be done in accordance with the provisions of ARTICLE 7 of the Shaw Center Plant Lease.

5.2.4 Disputes. Any disputes between the Parties regarding a Material Change or the consequences thereof, including the scope or cost of any Additional Work, will be resolved pursuant to ARTICLE 14 of the CEA.

Section 5.3 Consequences of Material Changes Not Requiring Additional Works.

5.3.1 Material Change Adjustments. Regardless of whether a Material Change will require Additional Works, if BREP determines that a Material Change is likely to result in greater or lower costs with respect to the performance of the Services, or if the State notifies BREP that it has determined the same, BREP will attempt to quantify such cost changes and will notify the State of its estimate and how BREP proposes to pass along such cost increases or savings to the State by way of a Material Change Adjustment within thirty (30) days after BREP becomes aware of such Material Change.

5.3.2 Resolution of Proposed Adjustments. During the thirty (30) days after BREP delivers its analysis of any Material Change Adjustment and any Baseline Adjustments in connection with a Material Change, the Parties will meet to attempt to arrive at an agreement as to the proposed Material Change Adjustment or Baseline Adjustment pursuant to the provisions of Section 5.2.3. Any disputes regarding a proposed Material Change Adjustment or Baseline Adjustment will be resolved pursuant to ARTICLE 14 of the CEA.

**ARTICLE 6
THERMAL SERVICES CHARGES**

From and after the Effective Date and throughout the Term, the State will pay to BREP monthly all Thermal Services Charges in accordance with the Thermal Services Rate Design attached as **Exhibit “D”** attached hereto. BREP acknowledges that the Base Thermal Services Charge owed by the State will be reduced by the monthly amount of the Base Rent owed by BREP pursuant to the Shaw Center Plant Lease to arrive at the amount of the Thermal Services Charge. The State acknowledges that the Off-taker Purchased Utility Cost Reimbursement will not reduce the monthly amount of the Thermal Services Charge, and instead will be due and payable from BREP as set forth in a Thermal Services Invoice, calculated in accordance with **Exhibit “D”** attached hereto. An illustrative calculation of Thermal Services Charges for a hypothetical Billing Month is attached as **Exhibit “E”** attached hereto.

**ARTICLE 7
BILLING**

Section 7.1 Thermal Services Invoice.

7.1.1 The Thermal Services performed by BREP will be billed in advance, and the Thermal Services Invoice will be delivered no later than the first (1st) day of each Billing Month to the e-mail address for notice set forth in Section 14.2.

7.1.2 The Parties acknowledge and agree that the Thermal Services Charges during each Service Year will be at least the aggregate amounts specified as such in **Exhibit “D”** attached hereto, and may not be reduced or offset in any way during such Service Year, and may be prorated for any partial month periods.

Section 7.2 Payment.

7.2.1 The State will pay or cause to be paid the Thermal Services Charge no later than the thirtieth (30th) day following the first day of each calendar month by delivering immediately available funds to the Lockbox. Payment of the Thermal Services Charge will not be conditioned upon the State’s receipt of a Thermal Services Invoice or any other notice by BREP,

and the State's obligation to timely and fully pay the Thermal Services Charge will not be excused or affected as a result of BREP's failure to timely send the State such invoices or notices.

7.2.2 Within thirty (30) days of receipt or delivery of each Thermal Services Invoice, each of the State and BREP will pay or cause to be paid to the other Party any other amounts specified in the applicable Thermal Services Invoice by delivering immediately available funds to the Lockbox (for amounts due BREP) or to the State (for amounts due the State for Off-taker Purchased Utility Cost Reimbursement and any other amounts that may be owed by BREP to the State under this Agreement or the Shaw Center Plant Lease). Any such other payments not timely paid will be deemed delinquent and subject to Section 7.6.

Section 7.3 Appropriation. All State obligations under this Agreement are subject to appropriation by the Legislature of sufficient funds therefor and the availability of funds following Legislative appropriation, and subject to termination due to unavailability of complete funding (*i.e.*, a Non-Appropriation Event). The State agrees that the State Budget proposed by the Governor to the Legislature will include the funds necessary for the State Investment for the Phase I Project, and to use its best efforts to affect the necessary Legislative appropriations for the funds necessary for the State Investment. In the event of a Non-Appropriation Event with respect to the Phase I Project, and if the State elects to terminate the Phase I Ancillary Agreements as a result thereof, following such terminations the State may not contract with any Person other than BREP or an Affiliate thereof for the provision of any work or services at a Covered Facility that would have been provided by BREP to a Covered Facility under the Phase I Ancillary Agreement but for such terminations.

Section 7.4 Lockbox. Regardless of any inconsistent or contradictory payment instructions set forth in a Thermal Services Invoice or any other invoice or reimbursement request submitted by BREP to the State, payment of all Thermal Services Charges and such invoices and requests will be made by wire or ACH transfer of immediately available funds directly to the Lockbox, unless otherwise directed in writing by BREP's Financier. The initial Lockbox instructions as of the Effective Date are set forth in the sample Thermal Services Invoice set forth on **Exhibit "E"** attached hereto. Without limiting the generality of the foregoing, for each Billing Month, the Thermal Services Charge shall be paid by the State on its due date, without offset or deduction, and regardless of whether a Thermal Services Invoice has been received by the State, by wire or ACH transfer of immediately available funds directly to the Lockbox, or as otherwise directed in writing by BREP's Financier.

Section 7.5 No Set-Off or Cessation of Payment.

7.5.1 SUBJECT TO SECTION 7.3 AND EXCEPT AS SET FORTH IN SECTION 7.5.2, THE STATE AGREES THAT FOR ALL PERIODS IT WILL PAY THE ENTIRE THERMAL SERVICES CHARGE, WHICH OBLIGATION WILL CONTINUE WITHOUT INTERRUPTION FOR THE TERM OF THIS AGREEMENT WITHOUT EXCEPTION AND THAT IT HAS AN ABSOLUTE AND UNCONDITIONAL OBLIGATION TO PAY THE ENTIRE THERMAL SERVICES CHARGE FOR EACH PERIOD IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT. THE STATE AGREES THAT IT IS NOT ENTITLED TO WITHHOLD, OFFSET, ABATE OR REDUCE ANY PAYMENT FOR THERMAL SERVICES IN AN AMOUNT LESS THAN THE THERMAL SERVICES CHARGE. THE STATE FURTHER AGREES THAT IT CONTINUES TO BE OBLIGATED TO PAY THE ENTIRE THERMAL SERVICES CHARGE NOTWITHSTANDING THAT, DURING THE TERM, THE STATE ELECTS NOT TO HAVE BREP PROVIDE ANY THERMAL SERVICES, SHAW CENTER REDUCES OR CEASES SOME OR ALL OF ITS OPERATIONS AT THE SHAW CENTER BUILDING, SHAW CENTER SUFFERS OR INCURS DAMAGE OR CASUALTY OR DESTRUCTION OF ALL

OR ANY PORTION OF THE SHAW CENTER BUILDING OR SUFFERS OR INCURS ANY OTHER MATTER OR INCIDENT, INCLUDING A LOSS OF AVAILABILITY, OR TAKES ANY ACTION AFFECTING SOME OR ALL OF ITS OPERATIONS. PAYMENTS OF THE THERMAL SERVICES CHARGE IN THE AFOREMENTIONED CIRCUMSTANCES SHALL NOT BE DEEMED AN OVERPAYMENT FOR THE PURPOSES OF LA. R.S. 39:72(B). THE STATE SPECIFICALLY WAIVES ANY RIGHT OF WITHHOLDING, SET-OFF, ABATEMENT OR REDUCTION (IN AN AMOUNT LESS THAN THE THERMAL SERVICES CHARGE) OR ANY OTHER DEFENSE AT LAW OR EQUITY TO ANY THERMAL SERVICES CHARGE DUE HEREUNDER, AND AGREES IT MUST PURSUE ITS REMEDIES AGAINST BREP WITHOUT WITHHOLDING, SET-OFF, ABATEMENT OR REDUCTION IN AN AMOUNT LESS THAN THE THERMAL SERVICES CHARGE, INCLUDING ANY PURSUIT OF ANY REMEDIES FOR BREP'S FAILURE TO PAY ANY DAMAGES OWED THE STATE PURSUANT TO SECTION 8.5. IT IS THE INTENTION OF THE PARTIES THAT AT LEAST THE THERMAL SERVICES CHARGE WILL CONTINUE TO BE PAYABLE IN ALL EVENTS IN THE MANNER AND AT THE TIMES SET FORTH IN THIS AGREEMENT.

7.5.2 NOTWITHSTANDING SECTION 7.5.1, IN THE EVENT THE STATE PAYS TO BREP AN AMOUNT IN EXCESS OF THE THERMAL SERVICES CHARGE IN ANY MONTH OF A SERVICE YEAR, THE STATE SHALL HAVE THE RIGHT TO OFFSET SUCH OVERPAYMENT AMOUNT, AND ONLY SUCH OVERPAYMENT AMOUNT, FROM A THERMAL SERVICES CHARGE IN A SUBSEQUENT MONTH PURSUANT TO LOUISIANA REVISED STATUTE 39:72(B).

Section 7.6 Late Payments. Late or delinquent Thermal Services Payments will accrue interest at the applicable rate of judicial interest, from the date on which they are deemed delinquent until fully paid.

ARTICLE 8 LOSS OF AVAILABILITY; STEP-IN RIGHTS; DAMAGES

Section 8.1 Adjustment. Except during and to the extent of a Loss of Availability, BREP will provide Thermal Services on a continuous basis, consistent with the then-current Thermal Services Requirements regularly and without interruption twenty-four (24) hour per day, seven (7) days per week, 365 (or 366) days per year, on the terms set forth in this Agreement.

Section 8.2 Loss of Availability.

8.2.1 An "**Excused Loss of Availability**" is a Loss of Availability that is directly caused by: (i) a State Event of Default, a Lessor Event of Default under the Shaw Center Plant Lease or any act or omission of the State or a State Person or Lessor or a Lessor Person (as defined in the Shaw Center Plant Lease) that would constitute a State Event of Default or a Lessor Event of Default with the passage of time and/or giving of notice; (ii) the fault or negligence of the State, a State Person or Shaw Center; (iii) a loss of or interruption in the provision of Utilities to the extent the Utilities not so provided cause or contribute to such Loss of Availability; (iv) an event of Force Majeure (and then subject to the provisions of Section 11.4); (v) an Excused Pipe Malfunction; (vi) an Excused Interior Distribution System Malfunction with respect to the Shaw Center Building; or (vii) a routine Maintenance Event. Any other Loss of Availability will be deemed an "**Unexcused Loss of Availability**".

8.2.2 In the event of any Loss of Availability, BREP will (i) provide immediate notice to the State (unless the State informs BREP of such Loss of Availability) upon BREP obtaining Knowledge thereof, and (ii) meet with a State Representative as soon as practicable, but in no event later than twenty-four (24) hours after the first occurrence of the Loss of Availability. In the event of any Loss of Availability, BREP will be obligated to undertake the steps provided in this Section 8.2, and in the event of an Excused Loss of Availability the State shall be responsible for reimbursing BREP for costs incurred pursuant to Section 8.2.3. In the event of an Unexcused Loss of Availability, the State may be entitled to Liquidated Damages and Step-In Damages as provided in Section 8.5.

8.2.3 In the event of any Loss of Availability, BREP will use Commercially Reasonable Efforts to cure such Loss of Availability (through temporary or alternative means of supplying Thermal Services) within twenty-four (24) hours of obtaining Knowledge thereof; provided, however, that, in the case of an Excused Loss of Availability, BREP will not be obligated to undertake such efforts if: (i) after it has exercised Commercially Reasonable Efforts to obtain the necessary equipment to be able to provide Thermal Services through temporary or alternative means, BREP determines it is impossible to continue to undertake such efforts; (ii) if it is unsafe to provide Thermal Services; or (iii) an event of Force Majeure renders it impractical to provide Thermal Services during such Loss of Availability. The State will additionally be liable to reimburse BREP for costs for any direct expenses incurred to third parties by BREP to supply Thermal Services temporarily or alternatively under this Section 8.2.3 associated with an Excused Loss of Availability (such as, by way of example, rental fees and expenses for equipment, and delivery fees and transportation costs charged by third parties). The State will reimburse BREP for such additional costs within thirty (30) days of the State's receipt of the invoice related thereto, together with reasonable supporting documentation.

Section 8.3 Step-In Rights.

8.3.1 The State will have the right to exercise State Step-In Rights under this Agreement at any time there is an Unexcused Loss of Availability that has continued for at least four (4) hours. Before exercising State Step-In Rights, the State will provide BREP and BREP's Financier Notice specifying that the State is exercising the State's Step-In Rights, which will include (i) to the extent of the State's Knowledge, an explanation of the underlying cause of the Loss of Availability, (ii) any actions that the State reasonably determines (based on the Knowledge then available to the State) that BREP should have taken but did not to resolve the Loss of Availability prior to the State exercising the State Step-In Rights, (iii) whether the State has been able to determine if it is an Excused Loss of Availability or Unexcused Loss of Availability and (iv) the State's Plan of Correction. Such Notice may also specify that the State directs BREP to cause Johnson Controls, Inc. ("**JCI**") to fulfill the State Step-In Rights, including creating the State's Plan of Correction; provided, further, that the State may at any time thereafter give notice to BREP to remove JCI from fulfilling the State Step-In Rights and the State may exercise the State Step-In Rights itself. As expeditiously as is feasible after provision of the State's Plan of Correction to BREP and BREP's Financier (either by the State or by JCI), taking into consideration the nature and extent of the Loss of Availability and whether an Emergency then exists, the State and BREP (and JCI if applicable) will use Commercially Reasonable Efforts to agree on the State's Plan of Correction and will keep BREP's Financier reasonably apprised of their efforts; provided, that it will not be a condition precedent to the State's or JCI's exercise of the State Step-In Rights that either BREP or BREP's Financier will have agreed to the State's Plan of Correction. For so long as it is exercising the State Step-In Rights, the State will use Commercially Reasonable Efforts to keep BREP and BREP's Financier reasonably apprised of its efforts in implementing the State's Plan of Correction and status of resolution of the Loss of Availability.

8.3.2 Notwithstanding the provisions of Section 8.3.1, if an Excused Loss of Availability is due to an event of Force Majeure, the State may not exercise the State Step-In Rights if and for so long as BREP is undertaking and diligently performing the actions set forth in the Operations Manual relating to such event of Force Majeure.

Section 8.4 Termination of Step-In Rights.

8.4.1 By BREP. In the event the State has exercised the State Step-In Rights and such Loss of Availability has continued beyond forty-eight (48) hours after the State's commencement of the State Step-In Rights (either directly or through JCI), BREP may seek to end the State Step-In Rights by delivering BREP's Plan of Correction. As expeditiously as is feasible after receipt of BREP's Plan of Correction by the State, taking into consideration the nature and extent of Loss of Availability, the Parties will use Commercially Reasonable Efforts to agree on BREP's Plan of Correction; provided, that BREP may not terminate the State Step-In Rights and regain control of the Covered Assets unless and until the State, in the exercise of its Commercially Reasonable Efforts, has approved BREP's Plan of Correction, which will be granted or withheld as soon as practicable by the State, and if withheld will be accompanied by a reasonably detailed explanation for the reasons the State's approval is being withheld. Thereafter, for so long as BREP is diligently providing the Services described in the approved BREP's Plan of Correction, the State Step-In Rights will terminate with respect to the Loss of Availability that triggered the exercise of such State Step-In Rights. For so long as it is pursuing a BREP's Plan of Correction pursuant to this Section 8.4.1, BREP will keep the State reasonably apprised of its efforts in implementing the BREP's Plan of Correction and status of resolution of the Loss of Availability.

8.4.2 By Resolution of Unexcused Loss of Availability. Within one (1) Business Day following resolution of a Loss of Availability by whatever means, the Parties will meet to discuss what caused and ultimately resolved such Loss of Availability. At such meeting the Parties will further discuss termination of the State Step-In Rights for such Loss of Availability and transition of control over the Covered Assets back to BREP, which will occur as soon as reasonably practicable; provided, that Liquidated Damages with respect to the subject Loss of Availability shall stop accruing from and after resolution of the Loss of Availability.

Section 8.5 Damages.

8.5.1 In the event of an Unexcused Loss of Availability that exceeds four (4) hours, BREP shall be liable to the State for Liquidated Damages for such Unexcused Loss of Availability as follows: (i) longer than four (4) hours but less than or equal to twenty-four (24) hours, Liquidated Damages of \$300 per hour; and (ii) longer than twenty-four (24) hours, Liquidated Damages of \$500 per hour; provided, however, that in no event may Liquidated Damages for a single (A) Unexcused Loss of Availability exceed \$30,000 and (B) Service Year exceed \$90,000.

8.5.2 In addition to any Liquidated Damages that may be payable, in the event the State exercises the State Step-In Right for an Unexcused Loss of Availability in accordance with the terms and conditions hereof, BREP will be responsible for all Step-In Damages.

8.5.3 BREP will reimburse the State for all Step-In Damages owed within thirty (30) days of BREP's receipt of the invoices related thereto. BREP will pay to the State all Liquidated Damages owed within thirty (30) days of the cessation of the applicable Unexcused Loss of Availability.

ARTICLE 9 MORTGAGES

The State consents to BREP's grant of a mortgage, security interest, pledge or assignment to BREP's Financier in, to and under all rights of BREP arising under the Phase I Ancillary Agreements, including BREP's right to receive Thermal Services Payments hereunder and the Termination Fee under any Phase I Ancillary Agreement, as well as the exclusive right during the Term of this Agreement to provide Thermal Services to the Shaw Center Building pursuant to this Agreement and the Shaw Center Plant Lease.

ARTICLE 10 TERM AND TERMINATION

Section 10.1 Term. The term of this Agreement (the "**Term**") will commence on the Effective Date and will continue in full force and effect until the twentieth (20th) anniversary of the Effective Date (the "**Expiry Date**") or the sooner termination of (i) this Agreement as provided in Section 10.2, (ii) the CEA or (iii) the Shaw Center Plant Lease, in all cases in accordance with the terms and conditions hereof or thereof. The Term of this Agreement may be extended only by the written agreement of the Parties, but in no event may this Agreement be extended beyond the term of the Shaw Center Plant Lease. Notwithstanding the foregoing, termination of this Agreement prior to the Expiry Date will not in and of itself terminate the Shaw Center Plant Lease or otherwise affect BREP's rights thereunder. For avoidance of doubt, in no event may the State terminate this Agreement or the Shaw Center Plant Lease (except pursuant to a termination of all of the Phase I Ancillary Agreements pursuant to a Non-Appropriation Event with respect to the entire Phase I Project (Termination by State for Phase I Non-Appropriation Event)) unless and until the State pays the entire Termination Fee due hereunder pursuant to Section 10.4.

Section 10.2 Grounds for Termination.

10.2.1 By State. The State may terminate this Agreement prior to the Expiry Date only upon:

10.2.1.1 a BREP Event of Major Default related to this Agreement or the Shaw Center Plant Lease (Termination by State for Cause), in such case to be exercised within sixty (60) days after the expiration of any applicable cure period for such BREP Event of Major Default; provided, however, that to terminate this Agreement pursuant to a BREP Event of Major Default described in Section 11.1.2.3, the State must give notice of termination to BREP no later than thirty (30) days following cessation of the latest applicable Unexcused Loss of Availability or such termination right will be waived until the next applicable Unexcused Loss of Availability during such Service Year;

10.2.1.2 for convenience (Termination by State for Convenience);

10.2.1.3 a Major Casualty Event affecting the Shaw Center Plant or total cessation of operations and use of the Shaw Center Building through casualty (Termination by State for Necessity), in either case to be exercised within sixty (60) days of the event giving rise to such termination right;

10.2.1.4 a Change in Law that substantially prevents the State from continuing its performance of substantially all of its obligations under this Agreement or the Shaw Center Plant Lease (Termination by State for Necessity);

10.2.1.5 upon an Extended Force Majeure Event that substantially prevents the State or BREP from continuing its performance of substantially all of its obligations under this Agreement or the Shaw Center Plant Lease (Termination by State for Necessity), in such case to be exercised within ninety (90) days after the occurrence of such Extended Force Majeure Event; or

10.2.1.6 a Non-Appropriation Event with respect to the Phase I Project (Termination by State for Non-Appropriation).

10.2.2 By BREP. BREP may terminate this Agreement prior to the Expiry Date only upon:

10.2.2.1 a State Event of Major Default related to this Agreement or a Lessor Event of Major Default under the Shaw Center Plant Lease (Termination by BREP for Cause), in such case to be exercised within sixty (60) days after the expiration of any applicable cure period for such State Event of Major Default;

10.2.2.2 a Major Casualty Event affecting the Shaw Center Plant or total cessation of operations and use of the Shaw Center Building through casualty (Termination by BREP for Necessity), in either case to be exercised within sixty (60) days of the event giving rise to such termination right; or

10.2.2.3 upon an Extended Force Majeure Event that substantially prevents the State or BREP from continuing its performance of substantially all of its obligations under this Agreement or the Shaw Center Plant Lease (Termination by BREP for Necessity), in such case to be exercised within ninety (90) days after the occurrence of such Extended Force Majeure Event.

Section 10.3 Procedures for Termination.

10.3.1 By BREP for Cause. Should BREP seek to terminate this Agreement pursuant to Section 10.2.2, after BREP has delivered any requisite Notices pursuant to Section 14.1 and all appropriate cure periods have expired, BREP shall provide an additional Notice to the State electing to terminate this Agreement. BREP shall specify the Termination Date in its Notice, which Termination Date shall not be less than sixty (60) days from the date such Notice is received by the State.

10.3.2 By BREP for Necessity. Should BREP seek to terminate this Agreement due to a Major Casualty Event or an Extended Force Majeure Event, BREP will provide Notice to the State at least ninety (90) days prior to the proposed Termination Date.

10.3.3 By the State for Cause. Should the State seek to terminate this Agreement pursuant to Section 10.2.1.1, after the State has delivered any requisite Notices pursuant to Section 14.1 and all appropriate cure periods have expired, the State shall provide an additional Notice to BREP, and BREP will have sixty (60) days from the receipt of such additional Notice to cure the BREP Event of Major Default. If BREP fails to cure the noticed BREP Event of Major Default during such sixty (60) day period, the State may terminate this Agreement by providing a final Notice of termination to BREP setting forth the Termination Date, which may be no earlier than sixty (60) days after BREP's receipt of such final Notice.

10.3.4 By the State for Convenience. Should the State seek to terminate this Agreement pursuant to Section 10.2.1.2, the State shall provide Notice to BREP at least ninety (90) days prior to the proposed Termination Date; provided, however, that in no event may the State terminate this Agreement pursuant to Section 10.2.1.2 unless the State simultaneously pays the entire Termination Fee payable with respect to such terminations pursuant to **Exhibit “M”** to the CEA.

10.3.5 By State for Necessity.

10.3.5.1 Major Casualty Event or Extended Force Majeure Event. Should the State seek to terminate this Agreement due to a Major Casualty Event or an Extended Force Majeure Event, the State will provide Notice to BREP at least ninety (90) days prior to the proposed Termination Date.

10.3.5.2 Change in Law. Should the State seek to terminate this Agreement due to a Change in Law, the State will provide Notice to BREP at least ninety (90) days prior to the proposed Termination Date of the Change in Law and describe in reasonable detail, including a written opinion of the State’s legal counsel, how such Change in Law substantially prevents the State from continuing its performance of substantially all of its obligations under this Agreement and/or the Shaw Center Plant Lease.

10.3.6 By State for Non-Appropriation Event. Upon the occurrence of a Non-Appropriation Event with respect to the Phase I Project, if the State desires to terminate this Agreement and the other Phase I Ancillary Agreements pursuant to Section 10.2.c of the CEA, the State shall provide Notice of the Non-Appropriation Event to BREP as soon as reasonably practicable after the State’s determination that the Non-Appropriation Event has occurred, but in any event within ninety (90) days thereof. The State shall specify the Termination Date in its Notice, which Termination Date shall not be less than ninety (90) days from the date such Notice is received by BREP. Notice of a Non-Appropriation Event shall include reasonable support establishing the occurrence of the Non-Appropriation Event.

Section 10.4 Termination Fee. The Parties acknowledge that this Agreement is a component of the Phase I Project under the Phase I Ancillary Agreements and the CEA. Upon termination of this Agreement and the Shaw Center Plant Lease, but not the termination of the other Phase I Ancillary Agreement, by either Party prior to the Expiry Date as permitted herein and therein, the State shall owe the Termination Fee to BREP determined in accordance with **Exhibit “G”** attached hereto. Upon termination of all of the Phase I Ancillary Agreements by the State prior to the Expiry Date as permitted by the CEA or the Phase I Ancillary Agreements, the State shall owe the Termination Fee to BREP determined in accordance with **Exhibit “M”** to the CEA. The Parties acknowledge that the Termination Fees described therein are reasonable estimates, and not penalties, of the presumed actual losses that BREP would suffer due to termination of all or any of the Phase I Ancillary Agreements prior to the Expiry Date, and that the calculation of any such reasonably estimated Termination Fees includes consideration of BREP’s Work-related costs (direct and indirect), equity commitments and any debt repayment and costs relating to any Termination hereof and thereof.

Section 10.5 Effect of Termination. No termination of this Agreement excuses either Party from any liability arising out of any default as provided in this Agreement that occurred prior to such termination.

ARTICLE 11
DEFAULT AND REMEDIES

Section 11.1 Events of Default.

11.1.1 By the State. Subject to Force Majeure as provided in Section 11.4, the occurrence of any of the following events shall constitute a State Event of Default:

11.1.1.1 The State fails to cure its breach of a non-monetary obligation under this Agreement within thirty (30) days after the State receives notice from BREP of the breach; provided, that if such breach cannot reasonably be cured during such 30-day period, the State will be entitled to an additional thirty (30)-day period within which to cure its breach, so long as it will have begun to cure such breach within the initial thirty (30)-day period and is diligently pursuing such cure;

11.1.1.2 The State fails to make any monetary payment due BREP under this Agreement within thirty (30) days after the State receives notice from BREP of such payment being past due; or

11.1.1.3 There shall occur a Lessor Event of Default under the Shaw Center Plant Lease (as such term is defined therein).

For purposes of this Agreement, each of (i) a State Event of Default described in Section 11.1.1.2 and (ii) a Lessor Event of Default that constitutes a Lessor Event of Major Default under the Shaw Center Plant Lease (as such term is defined therein), will be deemed to constitute a “**State Event of Major Default.**”

11.1.2 By BREP. Subject to Force Majeure as provided in Section 11.4, the occurrence of any of the following events shall constitute a BREP Event of Default:

11.1.2.1 BREP fails to cure its breach of a non-monetary obligation under this Agreement (other than an Unexcused Loss of Availability that lasts for more than forty eight (48) hours during a Service Year) within thirty (30) days after BREP receives notice from the State of the breach; provided, that if such breach cannot reasonably be cured during such 30-day period, BREP will be entitled to an additional thirty (30)-day period within which to cure its breach, so long as it will have begun to cure such breach within the initial thirty (30)-day period and is diligently pursuing such cure;

11.1.2.2 BREP fails to make any monetary payment due the State under this Agreement within thirty (30) days after BREP receives notice from the State of such payment being past due;

11.1.2.3 There occurs more than five (5) Unexcused Losses of Availability, each with a duration greater than four (4) hours, during any single Service Year; or

11.1.2.4 There shall occur a BREP Event of Default under the Shaw Center Plant Lease (as such term is defined therein).

For purposes of this Agreement, each of (i) a BREP Event of Default described in Sections 11.1.2.2 and 11.1.2.3 and (ii) a BREP Event of Default that constitutes a BREP Event of Major Default under the Shaw Center Plant Lease (as such term is defined therein), will be deemed to constitute a “**BREP Event of Major Default.**”

Section 11.2 Remedies.

11.2.1 For the State. Upon the occurrence of a BREP Event of Default, the State may: (i) seek specific performance of BREP's obligations under this Agreement; and/or (ii) seek any other remedy available to the State in law, including injunctive relief, but excluding termination. Upon the occurrence of a BREP Event of Major Default, subject to Section 10.3.3 hereof, the State may seek to terminate this Agreement. The State's ability to terminate this Agreement due to a BREP Event of Major Default shall be subject to the State's obligation to pay the applicable Termination Fees pursuant to **Exhibit "G"** attached hereto, and if the State is not able to pay the entirety of such Termination Fees as provided therein (either due to lack of appropriation or otherwise), the State may not terminate this Agreement and shall remain subject to the terms and conditions hereof.

11.2.2 For BREP. Upon the occurrence of a State Event of Default, BREP may pursue any remedy at law, equity or as provided for under this Agreement, including claims for damages, but excluding termination. In addition to the foregoing, upon the occurrence and continuation of a State Event of Major Default, BREP may terminate this Agreement in accordance with Section 10.3.1.

Section 11.3 Delay or Omission; Waiver. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach of this Agreement by the other Party shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. No provision of this Agreement will be considered waived unless the waiver is in writing and signed by an authorized representative of the Party granting the waiver. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

Section 11.4 Force Majeure.

11.4.1 Subject to the provisions of Section 11.4.2, to the extent a Party is prevented by an event of Force Majeure from carrying out any of its obligations under this Agreement and such Party gives notice and details of the event of Force Majeure and the obligations it is prevented from performing to the other Party as soon as practicable (and in any event within five (5) days after such event of Force Majeure first prevents performance by that Party), then the Party seeking relief will be temporarily excused during the continuance of the Force Majeure event from the performance of such of its obligations under this Agreement as are affected by the event of Force Majeure; provided, however, that no event of Force Majeure will excuse the monetary obligations of the Parties.

11.4.2 The Party affected by the event of Force Majeure will use Commercially Reasonable Efforts to eliminate or avoid the effects thereof and resume performing those obligations for which it was excused pursuant to Section 11.4.1.

**ARTICLE 12
REPRESENTATIVES**

Within five (5) Business Days of the Effective Date, BREP shall appoint three (3) BREP Services Period Representatives and the State shall appoint three (3) State Services Period Representatives (who shall be the same individuals selected as Lessor Services Period Representatives pursuant to the Shaw Center Plant Lease), each of whom will be authorized to act as a designated contact person(s) for matters

concerning this Agreement; provided, however, that throughout the Term, the Party's representatives may have different levels of authority to act on behalf of the appointing Party. A Party will be bound by the written communications from its representative to the other Party. In addition, in cooperation with BREP, the State will designate which State Representatives (but in any event at least one (1)) will be available twenty-four (24) hours per day, seven (7) days per week and the means by which such representatives may be contacted at all times. These particular State Services Representatives are to be notified by BREP at any time that BREP has Knowledge of an Emergency. A Party may remove and replace a representative upon providing the other Party with Notice. The Parties will be entitled to rely on the genuineness of such Notice from the other Party.

ARTICLE 13 ASSIGNMENT

BREP will not assign or otherwise transfer its rights or obligations under this Agreement except in accordance with the provisions of ARTICLE 9 of the CEA. The State shall not assign or otherwise transfer its rights or obligations under this Agreement under any circumstances.

ARTICLE 14 NOTICES

Section 14.1 Notice. Any Notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be delivered by: (i) hand-delivered by courier, with signed receipt; (ii) mailed through the United States Postal Service, postage prepaid, first-class, with return receipt requested; or (iii) delivered by private, commercial carrier, such as Federal Express, with signature for delivery; provided, that any Notice to BREP will also be sent to BREP's Financier as provided in this Section. All such communications shall be delivered to the officer, agent or representative (or their respective successor) identified in this Section at the address set forth below, or to such other Person and address as may be subsequently designated by such Party upon five (5) days written Notice to the other Parties.

To the State: [Name]
[State Entity]
[Address]
Telephone: (____) ____-____

With a copy to: [Name]
[Company]
[Address]
Telephone: (____) ____-____

To BREP: Michael T. Durham
Baton Rouge Energy Partners, LLC
8555 United Plaza Boulevard, Suite 201
Baton Rouge, Louisiana 70809
Telephone: (225) 706-9280

With a copy to: Charles A. Landry
Fishman Haygood, LLP
100 North Street, Suite 800
Baton Rouge, Louisiana 70802
Telephone: (225) 706-4080

To BREP's Financier: [Name]
[Company]
[Address]
Telephone: (____) ____-____

With a copy to: [Name]
[Company]
[Address]
Telephone: (____) ____-____

Section 14.2 Thermal Services Invoices. Notwithstanding the provisions of Section 14.1, delivery of the Thermal Services Invoice will be in writing and e-mailed to the State at the following address (or such other e-mail address as the State may request in accordance with the provisions of Section 14.1): _____.

ARTICLE 15 MISCELLANEOUS

Section 15.1 Entire Agreement, Amendments; Binding Effect. This Agreement, together with the CEA and the other Phase I Ancillary Agreements, constitute the Parties' entire agreement with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. Except as otherwise provided in this Agreement, no amendment, supplement or modification of this Agreement will be binding upon any Party unless executed in writing by such Party.

Section 15.2 Governing Law. This Agreement and all Exhibits to this Agreement, and all matters arising out of or relating to them shall be construed in accordance with and governed by the laws of the State of Louisiana. Any action for injunctive relief, damages, or any other purpose other than those set forth in ARTICLE 14 of the CEA shall be brought in the Nineteenth Judicial District Court in Baton Rouge, Louisiana.

Section 15.3 Inurement. This Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns.

Section 15.4 Relationship of Parties. Nothing in this Agreement will be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The Parties' respective obligations are individual and not collective in nature.

Section 15.5 Severability. Upon a determination that any term of this Agreement is invalid, illegal or unenforceable, the Parties will negotiate in good faith to modify this Agreement to affect the original intent of the Parties as closely as possible in order that the transactions contemplated by the Phase I Contract Documents are consummated as originally contemplated to the greatest extent possible.

Section 15.6 Survival. Expiration or termination of this Agreement for any reason will not relieve the Parties of any obligation accrued or accruing prior to such expiration or termination, all of which will survive the expiration or termination of the Agreement.

Section 15.7 Successors and Assigns. This Agreement shall be binding on and will inure to the benefit of the Parties to this Agreement and their respective successors and assigns.

Section 15.8 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one agreement. The signatures of any Party to a counterpart will be deemed to be a signature to, and may be appended to, any other counterpart. Digital signatures and other electronic signatures and copies of manual signatures transmitted by facsimile, e-mail or other electronic means will be binding and considered fully effective as if they were authentic original signatures.

Section 15.9 No Personal Liability. Except to the extent provided by law, no covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent or employee of any Party hereto in his individual capacity, and neither the officers of any Party hereto nor any official or agent executing this Agreement shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement. However, any Person may be held personally liable for such Person's individual fraudulent acts.

Section 15.10 Estoppel Certification. Any Party shall, without charge, at any time and from time to time hereafter within sixty (60) days after written request of another Party (such request to specify this Agreement and Section), certify by written instrument duly executed and acknowledged to any Person or entity specified in such request: (a) as to whether this Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Agreement, in accordance with its tenor as then constituted; (c) as to the existence of any default thereunder by such Party or, to such Party's Knowledge, the other Party; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other Party for which such Party has Knowledge; (e) as to the commencement and expiration dates of the Term of this Agreement; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the requesting Party and any other Person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the Party executing same. Any estoppel certification delivered pursuant to this Section 15.10 shall only speak as to the facts contained in such certification and shall not be deemed to constitute an amendment or modification to this Agreement.

Section 15.11 Confidential Proprietary or Trade Secret Information. All records containing proprietary or trade secret information which BREP intends to be maintained by the State as confidential pursuant to La. R.S. 44:3.2 shall be submitted with a cover sheet that provides in bold type "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION", and with each instance of information which BREP believes to be proprietary or trade secret information clearly marked.

Section 15.12 No Authorship Presumption. Each of the Parties has had an opportunity to obtain legal advice and negotiate the language of this Agreement. No presumption shall arise or adverse inference be drawn by virtue of authorship, and each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the Party whose counsel drafted that provision.

Section 15.13 Further Assurances. From time to time, and at any time, at and after the Effective Date, each Party will execute, acknowledge and deliver such documents and assurances, reasonably requested by any other Party (in such form reasonably acceptable to the requested Party) and will take any other action consistent with the terms of any Contract Document that may be reasonably

requested by a Party for the purpose of effecting or confirming any of the transactions contemplated hereby or thereby.

[THE REMAINDER OF THS PAGE IS INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, this Thermal Services Agreement has been signed in four originals by the undersigned duly authorized representatives, in the presence of the undersigned competent witnesses, on the dates indicated below.

WITNESSES:

STATE OF LOUISIANA

Signature

Printed Name

Signature

Printed Name

By: _____

Name: _____

Title: _____

Dated: [●], 2019

IN WITNESS WHEREOF, this Thermal Services Agreement has been signed in four originals by the undersigned duly authorized representatives, in the presence of the undersigned competent witnesses, on the dates indicated below.

WITNESSES:

BATON ROUGE ENERGY PARTNERS, LLC

Signature

Printed Name

Signature

Printed Name

By: _____

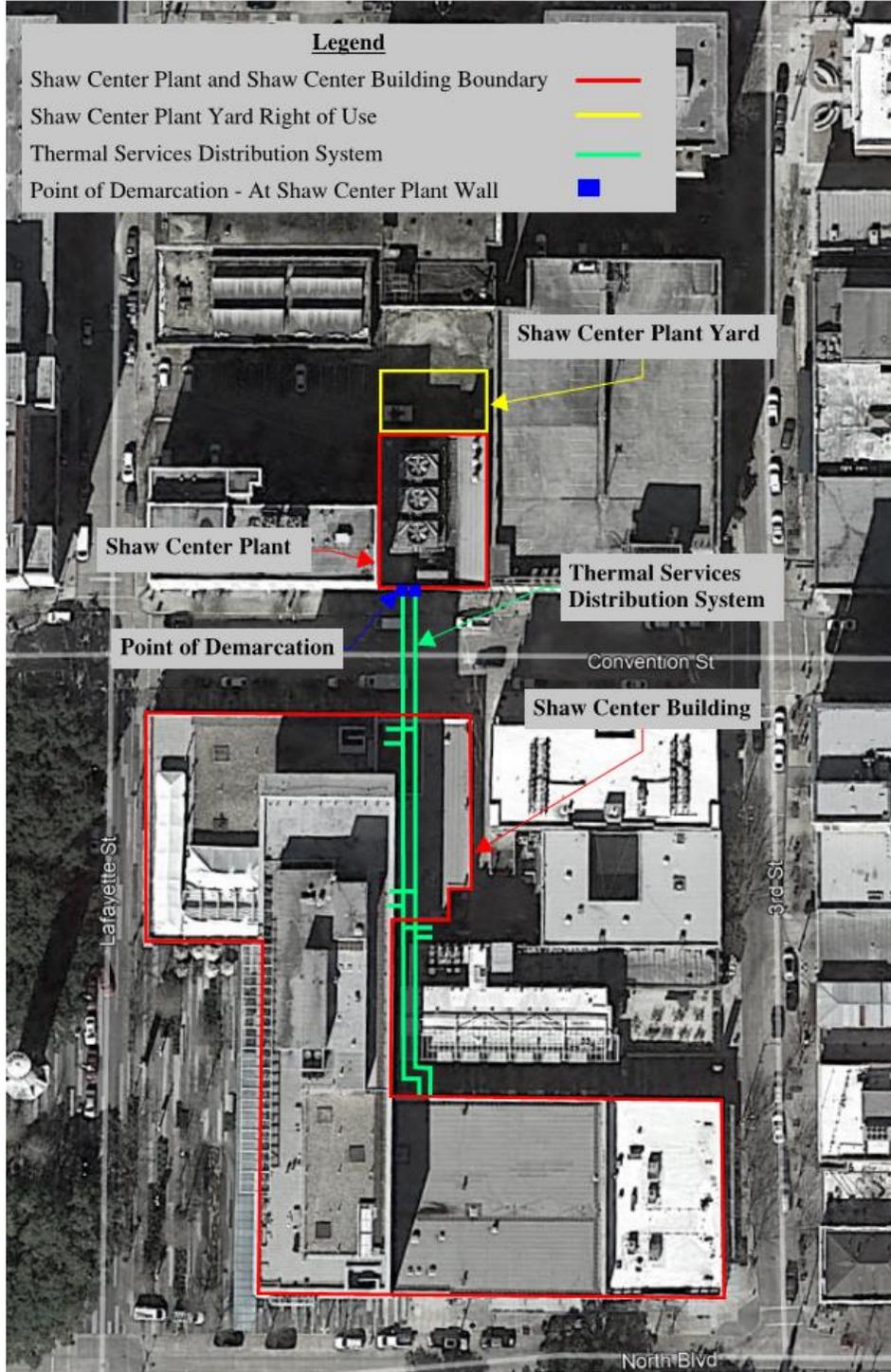
Name: _____

Title: _____

[●], 2019

EXHIBIT "A"

THERMAL SERVICES POINTS OF DEMARCATION



Note: The Thermal Services Distribution System is an Excluded Asset, unless otherwise set forth in Section 2.1(b) of the Lease. The Point of Demarcation is subject to adjustment pursuant to Section 2.1(b) of the Lease.

EXHIBIT “B”

PERFORMANCE STANDARDS

Except as otherwise set forth in this agreement, BREP will make chilled water and heating water available to the Shaw Center Building at the following temperatures and differential pressures:

- A. **CHILLED WATER SUPPLY TEMPERATURE:** Chilled water supply temperatures shall be less than or equal to 45 deg. F.
- B. **CHILLED WATER DIFFERENTIAL PRESSURE:** Chilled water differential pressure between Shaw Center Plant supply and return headers will be as required to meet the Shaw Center Building Thermal Services requirements.
- C. **HEATING WATER SUPPLY TEMPERATURE:** Heating water supply temperatures shall be not less than those indicated in the chart below:

Minimum Heating Water Supply Temperature	Outside Air Temperature
140 deg. F	Equal to or greater than 65 deg. F
Reset in a straight line fashion from 140 deg. F at an outside air temperature of 65 deg. F to 180 deg. F at an outside air temperature of 30 deg. F	Between 65 deg. F and 30 deg. F
180 deg. F	Equal to or less than 30 deg. F

- D. **HEATING WATER DIFFERENTIAL PRESSURE:** Heating water differential pressure as measured between the Shaw Center Plant supply and return headers shall be as required to meet the Shaw Center Building heating water requirements.

EXHIBIT “C”

THERMAL SERVICE REQUIREMENTS AND CAPACITY

A. EXISTING CHILLED WATER REQUIREMENTS

The existing Chilled Water Requirements prior to the completion of the Improvements are indicated in **Figure 1**.

Building Name	Floor Area (SF)	Peak Load (Tons)
Shaw Center	125,678	359
Shaw Center Plant	5,063	15
Totals	130,741	374

Figure 1 - Existing Chilled Water Requirements

B. PROJECTED CHILLED WATER REQUIREMENTS

The projected Chilled Water Requirements after the completion of the Improvements are indicated in **Figure 2**.

Building Name	Floor Area (SF)	Peak Load (Tons)
Shaw Center	125,678	314
Shaw Center Plant	5,063	13
Totals	130,741	327

Figure 2 - Projected Chilled Water Requirements

C. CHILLED WATER CAPACITY

The Chilled Water Capacity after the completion of the Improvements and the construction and potential serving of Third Party Off-takers are indicated in **Figure 3**.

Plant Name	Installed Capacity (Tons)	Buildings Served	Peak Load (Tons)	Coincident Peak Load (Tons)	Total Spare Capacity (Tons)	Largest Chiller (Tons)	Spare Capacity at N+1 Redundancy (Tons)
Shaw Center Plant	1,500	Shaw Center	327	N/A	1,173	500	673
Totals	1,500		327	N/A	N/A	N/A	673

Figure 3 - Chilled Water Capacity

D. POTENTIAL ADDITIONAL WORKS

In the event of Material Change requiring Additional Works, the Parties shall amend this Exhibit as appropriate.

EXHIBIT “D”

THERMAL SERVICES RATE DESIGN

A. THERMAL SERVICES CHARGE

The Thermal Services Charges have been established by subtracting the Rent Payment from the Base Thermal Services Charge. The monthly **Thermal Services Charge** for all months in a given Service Year are indicated in the table below:

Service Year	Base Thermal Services Charge (\$)	Rent Payment (\$)	Thermal Services Charge (\$ Annual)	Thermal Services Charge (\$ Monthly)
1	199,370	(123,881)	75,489	6,291
2	240,782	(127,313)	113,469	9,456
3	241,662	(130,839)	110,823	9,235
4	248,285	(134,464)	113,822	9,485
5	255,090	(138,188)	116,902	9,742
6	262,083	(142,016)	120,067	10,006
7	269,267	(145,950)	123,318	10,276
8	276,650	(149,993)	126,657	10,555
9	284,235	(154,147)	130,088	10,841
10	292,029	(158,417)	133,612	11,134
11	300,037	(162,805)	137,232	11,436
12	308,266	(167,315)	140,951	11,746
13	316,721	(171,950)	144,771	12,064
14	325,409	(176,713)	148,696	12,391
15	334,335	(181,608)	152,727	12,727
16	343,507	(186,638)	156,869	13,072
17	352,932	(191,808)	161,124	13,427
18	362,615	(197,121)	165,494	13,791
19	372,565	(202,582)	169,984	14,165
20	382,789	(208,193)	174,596	14,550
Total	5,968,631	(3,251,942)	2,716,689	N/A

ALL THERMAL SERVICES CHARGE PAYMENTS SHALL BE MADE PURSUANT TO THE TERMS AND CONDITIONS OF THE CONTRACT DOCUMENTS.

B. OFF-TAKER PURCHASED UTILITY COST REIMBURSEMENT

For any Billing Month in which there is a Third Party Off-taker, the **Off-taker Purchased Utility Reimbursement** shall apply and shall be calculated as follows:

Off-taker Purchased Utility Cost Reimbursement

1. **Off-taker Purchased Utility Cost Reimbursement** in \$ for a Billing Month is equal to the sum of the **Off-taker Thermal Services Purchased Electricity Cost Reimbursement**, and the **Off-taker Thermal Services Purchased Water Cost Reimbursement**. The Off-taker Purchased Utility Cost Reimbursement shall be paid quarterly in arrears by BREP to the State. Within thirty (30) days following the conclusion of each quarter, to the extent not previously provided, the State will provide Public Services Invoices to BREP for the quarter at issue. The Off-taker Purchased Utility Cost Reimbursement shall be paid within thirty (30) days of receipt of all such Public Services Invoices. Past due amounts accrue interest at the lower of 1% per month and the maximum lawful rate.

Off-taker Thermal Services Purchased Electricity Cost Reimbursement

2. **Off-Taker Thermal Services Purchased Electricity Cost Reimbursement** in \$ for a Billing Month is equal to the **Actual Thermal Services Plant Electricity Efficacy** multiplied by the **Off-taker Thermal Services Consumption** multiplied by the **Total Thermal Services Production** divided by the **Total Thermal Services Consumption** multiplied by the **Actual Electricity Average Unit Cost**.
3. **Total Thermal Services Consumption** is equal to the sum of the consumptions in Ton-Hours recorded by all Thermal Services consumption meters during the Billing Month.
4. **Total Thermal Services Production** is equal to the sum of the Thermal Services productions in Ton-Hours recorded by the individual water chiller Thermal Services production meters (located at each water chiller) during the Billing Month.
5. **Actual Thermal Services Plant Electricity Efficacy** in kWh per Ton-Hour for a Billing Month is equal to the **Thermal Services Plant Electricity Consumption** divided by the **Total Thermal Services Production**.
6. **Thermal Services Plant Electricity Consumption** in kWh for a Billing Month is equal to the sum of the electricity consumptions of the **Thermal Services Plant Assets** (e.g., water chillers, cooling towers, plant chilled water pumps, and plant condenser water pumps) during the Billing Month.
7. **Total Electricity Consumption** in kWh for a Billing Month is equal to the sum of the consumptions indicated on the Public Services Invoice for the electricity Utility Meters serving the Shaw Center Plant for the applicable Billing Month.
8. **Total Cost of Electricity** in \$ for a Billing Month is equal to the sum of the total billed amounts indicated on the Public Services Invoice for the electricity Utility Meters serving the Shaw Center Plant for the applicable Billing Month less all fixed costs unrelated to metered demand or consumption (i.e. street lights, customer charges, additional facilities charges, etc.).

9. **Actual Electricity Average Unit Cost** in \$ per kWh for a Billing Month is equal to the **Total Cost of Electricity** divided by the **Total Electricity Consumption** with adjustments as needed to account for actual rates indicated on the Public Services Invoices (i.e. demand ratchet clause) such that any incremental increase in electricity costs incurred by the State as a result of Third Party Off-taker Thermal Services consumption is recovered by the State from BREP.

Off-taker Thermal Services Purchased Water Cost Reimbursement

10. **Off-taker Thermal Services Purchased Water Cost Reimbursement** in \$ for a Billing Month is equal to the **Actual Thermal Services Plant Water Efficacy** multiplied by the **Off-taker Thermal Services Consumption** multiplied by the **Total Thermal Services Production** divided by the **Total Thermal Services Consumption** multiplied by the **Actual Water Average Unit Cost**.
11. **Actual Thermal Services Plant Water Efficacy** in Gallons per Ton-Hour of Thermal Services production for a Billing Month is equal to the **Cooling Tower Make-Up Water Consumption** divided by the **Total Thermal Services Production**.
12. **Cooling Tower Make-Up Water Consumption** in Gallons for a Billing Month is the sum of the cooling tower make-up water consumptions in Gallons during the Billing Month.
13. **Total Water Consumption** in Gallons for a Billing Month is equal to the sum of the consumptions indicated on the Public Service Invoices in Gallons for the water Utility Meters serving the Shaw Center Plant for the applicable Billing Month.
14. **Total Cost of Water** in \$ for a Billing Month is equal to the sum of the total billed amounts indicated on the Public Services Invoices for the water Utility Meters serving the Shaw Center Plant for the applicable Billing Month less all fixed costs unrelated to metered consumption (i.e. fire protection, customer charges, etc.) .
15. **Actual Water Average Unit Cost** is \$ per Gallon for a Billing Month is equal to the **Total Cost of Water** divided by the **Total Water Consumption**.

EXHIBIT "E"
SAMPLE CALCULATION OF THERMAL SERVICES CHARGES

Thermal Services Charge

**Baton Rouge Energy
Partners, LLC**

Bill Date: 7/1/2021
Due Date: 7/11/2021
Service Period: 7/1/2021 - 7/31/2021
Billed: Monthly

Summary of Service

Service Address: Shaw Center for the Arts
 100 Lafayette St
 Baton Rouge, LA 70801

Account Number: 88-17-0007
 Invoice Number: 1234 - 2021 - 7

Previous Activity/Charges:
 Total Amount Due Last Bill: \$ 9,235
 Payment Received: \$ 9,235
Current Balance \$ -

If Payment is sent after the due date, a late fee will be assessed.

Summary of Charges/Credits

Thermal Services Charge

Base Thermal Services Charge	\$	20,139
Rent Payment	\$	(10,903)

Total Current Charges \$ **9,235**

Total Amount Due: \$ **9,235**

Bill To:
 State of Louisiana
 Address 1
 Address 2
 Attention: Division of Administration

Payments To:
 Whitney Bank, Baton Rouge LA
 ATTN: Corporate Trust Dept.
 REF: 0123456789
 ABA# 0123456789
 ACCT# 0123456789

EXHIBIT "E"
SAMPLE CALCULATION OF THERMAL SERVICES CHARGES

THE BELOW AMOUNT ARE ILLUSTRATIVE ONLY AND DO NOT REPRESENT ACTUAL VALUES TO OCCUR.

Off-Taker Purchased Utility Cost Reimbursement

**Baton Rouge Energy
Partners, LLC**

Bill Date: 7/1/2021
Due Date: 7/31/2021
Service Period: 4/1/2021 - 7/1/2021
Billed: Quarterly

Summary of Service

Service Address: Shaw Center for the Arts
 100 Lafayette St
 Baton Rouge, LA 70801

Account Number: 88-17-0007
 Invoice Number: 1234 - Y3 - Q2

Previous Activity/Charges:
 Total Amount Due Last Bill: \$ 51,350
 Payment Received: \$ 51,350
Current Balance \$ -

If Payment is sent after the due date, a late fee will be assessed.

Meter Readings:

Thermal Services (Ton-Hours) Shaw Center 196,518
 Thermal Services (Ton-Hours) Off-Takers 919,800
Thermal Services (Ton-Hours) Total 1,116,318

Total Amount Due: \$ 51,350

Summary of Charges/Credits

Off-Taker Purchased Utility Cost Reimbursement

Off-Taker Thermal Services Purchased Electricity \$ 45,936
 Cost Reimbursement
 Off-Taker Thermal Services Purchased Water \$ 5,414
 Cost Reimbursement

Subtotal Charges \$ 51,350

Total Current Charges \$ 51,350

Credits Paid To:

State of Louisiana
 Address 1
 Address 2
 Attention: Division of Administration

Charges Billed To:

Whitney Bank, Baton Rouge LA
 ATTN: Corporate Trust Dept.
 REF: 0123456789
 ABA# 0123456789
 ACCT# 0123456789

EXHIBIT “F”

MATERIAL CHANGE OBLIGATIONS

The notice to be provided by BREP to the State pursuant to Section 5.2.2 [Material Change Notice] will include an economic analysis consisting of the following components:

- A. A description of the Material Change, the cause thereof and the general impact on BREP’s ability to provide the Thermal Services in the future.
- B. BREP’s reasonable estimate of the effect on Thermal Services peak coincident demand (inclusive of distribution losses) resulting from such Material Change.
- C. BREP’s reasonable estimate of the change in annual Thermal Services consumption resulting from the Material Change.
- D. Schematic design of the Additional Works deemed necessary or prudent by BREP to accommodate the Material Change in order to reliably provide Thermal Services after such Material Change, including a narrative description of the work, preliminary drawings, and preliminary equipment selections.
- E. BREP’s reasonable estimate of the total cost to design, construct, and commission the Additional Works associated with the Material Change.
- F. BREP’s estimate of the timeline for construction of the Additional Works.
- G. BREP’s estimate of the change to its monthly operating expenses resulting from the Material Change.

EXHIBIT “G”
TERMINATION

The following tables set forth the fees that will be payable by and to the State and BREP in the event of termination of the Thermal Services Agreement. Initially capitalized terms used in this **Exhibit “G”** and not defined in Section 10.2 of the Thermal Services Agreement or **Exhibit “A”** to the CEA shall have the meanings ascribed at the end of this Exhibit.

Schedule	Description
1	Termination by State for Cause
2	Termination by BREP for Cause
3	Termination by the State for Convenience
4	Termination by State for Necessity
5	Termination by BREP for Necessity
6	TSA Termination Costs

Schedule 1 – Termination by State for Cause

Service Year	Estimated BREP Reimbursement to State of the Unearned Shaw Center Improvements Amount (\$)	Total Estimated Termination Cost (\$)
1	0	0
2	362,713	362,713
3	0	0
4	0	0
5	0	0
6	0	0
7	0	0
8	0	0
9	0	0
10	0	0
11	0	0
12	0	0
13	0	0
14	0	0
15	0	0
16	0	0
17	0	0
18	0	0
19	0	0
20	0	0

Schedule 2 – Termination by BREP for Cause

Service Year	Encumbered Operating Expenses (\$)	Estimated Additional Taxes (\$)	Stranded O&M Start-Up Investment (\$)	Stranded Off-Taker Extension Investment (\$)	Stranded Shaw Center Improvements Investment (\$)	TSA Termination Cost (\$)	Total Estimated Termination Cost (\$)
1	349,483	690,880	100,000	0	0	2,000,000	3,140,363
2	357,172	2,654,078	95,000	3,370,710	362,713	2,000,000	8,839,672
3	365,029	3,492,852	90,000	5,171,692	604,521	1,970,000	11,694,095
4	373,060	3,571,135	85,000	5,567,819	574,295	1,650,000	11,821,309
5	381,267	3,670,826	80,000	5,923,743	544,069	1,400,000	11,999,906
6	389,655	3,461,345	76,000	5,553,509	513,843	1,350,000	11,344,353
7	398,228	3,237,814	72,000	5,183,275	483,617	1,250,000	10,624,934
8	406,989	3,000,233	68,000	4,813,042	453,391	1,100,000	9,841,654
9	415,942	2,776,810	64,000	4,442,808	423,165	1,000,000	9,122,724
10	425,093	2,569,236	51,000	4,072,574	392,939	965,000	8,475,842
11	434,445	2,353,822	40,000	3,702,340	362,713	900,000	7,793,320
12	444,003	2,137,902	32,000	3,332,106	332,487	830,000	7,108,498
13	453,771	1,922,324	25,000	2,961,872	302,261	760,000	6,425,227
14	463,754	1,707,370	20,000	2,591,638	272,034	690,000	5,744,796
15	473,957	1,491,349	16,000	2,221,404	241,808	615,000	5,059,518
16	484,384	1,272,572	12,000	1,851,170	211,582	530,000	4,361,708
17	495,040	1,055,552	9,000	1,480,936	181,356	450,000	3,671,884
18	505,931	840,290	7,000	1,110,702	151,130	375,000	2,990,053
19	517,061	622,275	5,000	740,468	120,904	290,000	2,295,708
20	528,437	403,201	4,000	370,234	60,452	200,000	1,566,323

Schedule 3 – Termination by the State for Convenience

Service Year	Estimated BREP Reimbursement to State of the Unearned Shaw Center Improvements Amount (\$)	Encumbered Operating Expenses (\$)	Estimated Additional Taxes (\$)	Stranded O&M Start-Up Investment (\$)	Stranded Off-Taker Extension Investment (\$)	Stranded Shaw Center Improvements Investment (\$)	TSA Termination Cost (\$)	Total Estimated Termination Cost (\$)
1	0	349,483	690,880	100,000	0	0	2,000,000	3,140,363
2	362,713	357,172	2,756,382	95,000	3,370,710	362,713	2,000,000	9,304,688
3	0	365,029	3,492,852	90,000	5,171,692	604,521	1,970,000	11,694,095
4	0	373,060	3,571,135	85,000	5,567,819	574,295	1,650,000	11,821,309
5	0	381,267	3,670,826	80,000	5,923,743	544,069	1,400,000	11,999,906
6	0	389,655	3,461,345	76,000	5,553,509	513,843	1,350,000	11,344,353
7	0	398,228	3,237,814	72,000	5,183,275	483,617	1,250,000	10,624,934
8	0	406,989	3,000,233	68,000	4,813,042	453,391	1,100,000	9,841,654
9	0	415,942	2,776,810	64,000	4,442,808	423,165	1,000,000	9,122,724
10	0	425,093	2,569,236	51,000	4,072,574	392,939	965,000	8,475,842
11	0	434,445	2,353,822	40,000	3,702,340	362,713	900,000	7,793,320
12	0	444,003	2,137,902	32,000	3,332,106	332,487	830,000	7,108,498
13	0	453,771	1,922,324	25,000	2,961,872	302,261	760,000	6,425,227
14	0	463,754	1,707,370	20,000	2,591,638	272,034	690,000	5,744,796
15	0	473,957	1,491,349	16,000	2,221,404	241,808	615,000	5,059,518
16	0	484,384	1,272,572	12,000	1,851,170	211,582	530,000	4,361,708
17	0	495,040	1,055,552	9,000	1,480,936	181,356	450,000	3,671,884
18	0	505,931	840,290	7,000	1,110,702	151,130	375,000	2,990,053
19	0	517,061	622,275	5,000	740,468	120,904	290,000	2,295,708
20	0	528,437	403,201	4,000	370,234	60,452	200,000	1,566,323

Schedule 4 – Termination by State for Necessity

Service Year	Estimated BREP Reimbursement to State of the Unearned Shaw Center Improvements Amount (\$)	Encumbered Operating Expenses (\$)	Estimated Additional Taxes (\$)	Stranded O&M Start-Up Investment (\$)	Stranded Off-Taker Extension Investment (\$)	Stranded Shaw Center Improvements Investment (\$)	TSA Termination Cost (\$)	Total Estimated Termination Cost (\$)
1	0	349,483	408,829	100,000	0	0	1,000,000	1,858,312
2	362,713	357,172	2,474,330	95,000	3,370,710	362,713	1,000,000	8,022,637
3	0	365,029	3,215,032	90,000	5,171,692	604,521	985,000	10,431,274
4	0	373,060	3,338,443	85,000	5,567,819	574,295	825,000	10,763,617
5	0	381,267	3,473,390	80,000	5,923,743	544,069	700,000	11,102,470
6	0	389,655	3,270,961	76,000	5,553,509	513,843	675,000	10,478,968
7	0	398,228	3,061,532	72,000	5,183,275	483,617	625,000	9,823,652
8	0	406,989	2,845,105	68,000	4,813,042	453,391	550,000	9,136,526
9	0	415,942	2,635,784	64,000	4,442,808	423,165	500,000	8,481,699
10	0	425,093	2,433,147	51,000	4,072,574	392,939	482,500	7,857,252
11	0	434,445	2,226,899	40,000	3,702,340	362,713	450,000	7,216,397
12	0	444,003	2,020,851	32,000	3,332,106	332,487	415,000	6,576,446
13	0	453,771	1,815,144	25,000	2,961,872	302,261	380,000	5,938,047
14	0	463,754	1,610,062	20,000	2,591,638	272,034	345,000	5,302,488
15	0	473,957	1,404,619	16,000	2,221,404	241,808	307,500	4,665,287
16	0	484,384	1,197,828	12,000	1,851,170	211,582	265,000	4,021,964
17	0	495,040	992,090	9,000	1,480,936	181,356	225,000	3,383,422
18	0	505,931	787,405	7,000	1,110,702	151,130	187,500	2,749,668
19	0	517,061	581,377	5,000	740,468	120,904	145,000	2,109,811
20	0	528,437	374,995	4,000	370,234	60,452	100,000	1,438,118

Schedule 5 – Termination by BREP for Necessity

Service Year	Estimated BREP Reimbursement to State of the Unearned Shaw Center Improvements Amount (\$)	Encumbered Operating Expenses (\$)	Estimated Additional Taxes (\$)	Total Estimated Termination Cost (\$)
1	0	349,483	126,777	476,260
2	362,713	357,172	2,192,279	2,912,163
3	0	365,029	2,937,211	3,302,241
4	0	373,060	3,105,750	3,478,810
5	0	381,267	3,275,954	3,657,222
6	0	389,655	3,080,576	3,470,231
7	0	398,228	2,885,250	3,283,478
8	0	406,989	2,689,977	3,096,966
9	0	415,942	2,494,758	2,910,701
10	0	425,093	2,297,057	2,722,150
11	0	434,445	2,099,976	2,534,421
12	0	444,003	1,903,800	2,347,803
13	0	453,771	1,707,965	2,161,736
14	0	463,754	1,512,754	1,976,508
15	0	473,957	1,317,888	1,791,845
16	0	484,384	1,123,085	1,607,468
17	0	495,040	928,628	1,423,669
18	0	505,931	734,520	1,240,451
19	0	517,061	540,480	1,057,541
20	0	528,437	346,790	875,227

Schedule 6 – TSA Termination Costs

Service Year	TSA Termination Cost (\$)
1	2,000,000
2	2,000,000
3	1,970,000
4	1,650,000
5	1,400,000
6	1,350,000
7	1,250,000
8	1,100,000
9	1,000,000
10	965,000
11	900,000
12	830,000
13	760,000
14	690,000
15	615,000
16	530,000
17	450,000
18	375,000
19	290,000
20	200,000

Any amounts owed by BREP to the State set forth in this **Exhibit “G”** (either directly or as reimbursement) shall be due and payable within five (5) Business Days after the State has paid all amounts owed by the State to BREP’s Financier or BREP, as applicable.

DEFINITIONS:

- a. “Additional Taxes” represents the additional taxes to be incurred by BREP as a result of a termination prior to the Expiry Date. The Additional Taxes is equal to the amount indicated in the applicable Termination Schedule.
- a. “Encumbered Operating Expenses” represents the encumbered expenses for which BREP will be liable incurred in furtherance of the Project. The Encumbered Operating Expenses is equal to the actual amount not to exceed the amount indicated in the applicable Termination Schedule.
- b. “Stranded O&M Start-Up Investment” represents expenses for which BREP has incurred in furtherance of starting the Project, and equals \$100,000.
- c. “Stranded Off-Taker Extension Investment” is equal to the actual book basis of BREP’s stranded investment in Off-taker Improvements not to exceed \$5,923,743.

- d. “Stranded Shaw Center Improvements Investment” is equal to the actual book basis of BREP’s stranded investment in Shaw Center Improvements not to exceed \$604,521.
- e. “TSA Termination Cost” means the BREP opportunity cost (loss of potential gain from investing its development efforts and equity in the Thermal Services Agreement, instead of other opportunities) caused by the termination of the Thermal Services Agreement prior to Expiry Date. The TSA Termination Cost equals the amount indicated in Schedule 6 of this **Exhibit “G”**, with the exception of Termination by State for Necessity for which the TSA Termination Cost is equal to 50% of the amount indicated in Schedule 6 of this **Exhibit “G”**.
- f. “Unearned Shaw Center Improvements Amount” is equal to the cost of completing the remainder of the Shaw Center Improvements, i.e. the portion of the Shaw Center Improvements that is incomplete as of the Termination Date.